

ONE HUNDRED FIRST LEGISLATURE - FIRST SESSION - 2009
COMMITTEE STATEMENT
LB306

Hearing Date: Thursday January 29, 2009
Committee On: Judiciary
Introducer: Council
One Liner: Repeal the death penalty and replace it with life imprisonment without possibility of parole

Roll Call Vote - Final Committee Action:
Advanced to General File

Vote Results:

| | | |
|----------------------------|---|---|
| Aye: | 6 | Senators Ashford, Coash, Council, Lathrop, McGill, Rogert |
| Nay: | 1 | Senator Lautenbaugh |
| Absent: | | |
| Present Not Voting: | 1 | Senator Christensen |

Proponents:

Sen. Brenda Council
Ernie Chambers
Alan Peterson
Ronald Reagan
Kathleen Hawk Norman
Robert Creager
Roger Welliver
Craig Groat
Miriam Thimm Kelle
Ben Gray
Jim Cunningham
Randy Steidl
Rev. Dr. Chuck Bentjen

Representing:

Introducer
self
self
self
self
NE Criminal Defense Attorneys Association
self
self
self
New World Youth Development
NE Catholic Conference
Witness to Innocence
ELCA; Christian Church in NE; Presbyterian Church USA; UMC of NE

Opponents:

Virgil Jacob
Joseph Smith
Bill Sun

Representing:

FFI
Madison County
Sun family

Neutral:

Mark Young

Representing:

Hall County Attorney's Office

Summary of purpose and/or changes:

Legislative Bill 306 proposes to change the maximum penalty for first degree murder in Nebraska from death to life imprisonment without possibility of parole.

Below is a section by section description of LB 306.

Section 1 - Legislative Intent

Section 2 - Amends 23-3406 relating to counties contracting with public defenders to strike the phrase "including capital cases"

Section 3 - Amends 24-1106 relating to appeals to replace a reference to capital cases with a reference to cases in which life imprisonment without parole has been imposed.

Section 4 - Amends 25-1140.09 to remove a reference to a capital sentencing notice provision which required preparation of transcripts in all capital cases and is no longer applicable.

Section 5 - Amends 28-104 to strike a reference to a criminal violation for which death may be imposed

Section 6 - Amends 28-105, the change the penalty for a Class I felony from death to life imprisonment without possibility of parole and with order of restitution. Also replaces the penalty for a Class IA felony from life imprisonment without parole to life imprisonment.

Section 7 - Amends 28-303, the first degree murder statute, to remove the death penalty and replace it with life imprisonment without possibility of parole.

Section 8--Amends 29-1602, Strikes notice of aggravation from inclusion in the criminal information that must be filed in cases seeking the "death penalty".

Section 9 - Amends 29-1603, which sets forth the required contents of criminal information, to remove reference to the death penalty and replace it with life imprisonment without possibility of parole.

Section 10 - Amends 29-1822, relating to mentally incompetent criminal defendants, to remove language staying the imposition of the death penalty during a period of mental incompetence.

Section 11 - Amends 29-2004, relating to jury selection, to replace language referring to the death penalty with life imprisonment without possibility of parole.

Section 12 - Amends 29-2005, which provides the number of preemptory juror challenges a defendant is entitled to in capital cases, to replace references to the death penalty with life imprisonment without possibility of parole.

Section 13 - Amends 29-2006, which lists the basis for good cause challenges of prospective jurors, to strike as the basis for a challenge in death eligible cases that a juror would be unable to render a guilty verdict if the accused faced the possibility of receiving the death penalty.

Section 14 - Amends 29-2020, relating to requesting a bill of exceptions, to strike language referring to a procedure only used in death penalty cases.

Section 15 - Amends 29-2027 to change a statutory reference to remove an unnecessary reference to a legislative intent section (29-2519) and a title section (29-2524).

Section 16 - Amends 29-2204, the indeterminate sentencing statute, to remove outdated language and references to the death penalty

Section 17--Amends 29-2261, by striking reference that when a conviction of murder in the first degree, a jury renders a verdict finding the existence of one or more aggravating circumstance, the information contains a notice of aggravation, the court shall not commence the sentencing determination proceeding as provided in section 29-2521 without first ordering a presentence investigation of the offender and according due consideration to a written report of such investigation.

Section 18 - Amends 29-2282, the restitution statute, to include the pain and suffering of the victim as an item for which restitution may be ordered in cases where the victim dies as a result of the offense.

Section 19 - Amends 29-2407, which provides that criminal fines and costs are to be a lien against a defendant, to remove references to the death penalty.

Section 20 - New Language clarifying that a sentence of life imprisonment without possibility of parole means there is no parole eligibility unless such a sentence is first commuted by the Board of Pardons.

Section 21 - New language clarifying that the changes made by this bill shall not restrict or limit the ability of a court to order restitution in cases other than first degree murder convictions or restrict the ability of the Department of Corrections to determine appropriate security considerations for confined offenders.

Section 22 - New Language requiring death sentences issued prior to effective date of this act which have not been carried out to be changed to life imprisonment without possibility of parole and with order of restitution.

Section 23 - Amends 29-2801, establishing the procedures for state habeas corpus petitions, to remove references to capital sentences and make other technical corrections.

Section 24 - Amends 29-3205 to correct a statutory reference and remove a reference to a death sentence.

Sections 25 to 29 - Amends sections 29-3920, 3922, and 3928-3930, relating to the Public Advocacy Commission, to strike references to capital cases and insert first degree murder.

Section 30 - Amends section 55-480 to clarify a statutory reference to the Nebraska Code of Military Justice.

Section 31 - Amends 83-1,110.02, the medical parole statutes to replace death penalty with life imprisonment without possibility of parole.

Section 32 - Amends 83-4,143, the Work Ethic Camp eligibility statute, to remove a reference to a capital crime.

Section 33 - Repealer

Brad Ashford, Chairperson